

**STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD**



MARITZA I. QUINTANILLA,

Charging Party,

v.

REGENTS OF THE UNIVERSITY OF
CALIFORNIA (BERKELEY),

Respondent.

Case No. SF-CE-1005-H

PERB Decision No. 2334

October 10, 2013

Appearance: Maritza I. Quintanilla, on her own behalf.

Before Martinez, Chair; Winslow and Banks, Members.

DECISION¹

WINSLOW, Member: This case is before the Public Employment Relations Board (PERB or Board) on an appeal by Maritza I. Quintanilla (Quintanilla) from the dismissal (attached) of her unfair practice charge against the Regents of the University of California (Berkeley) (UC). The charge did not indicate what specific sections of the Government Code were alleged to have been violated, contained no narrative description of what allegedly occurred, but instead was accompanied, without explanation, by a notice of a five-day suspension imposed by UC on November 28, 2011, and by documents that are apparently related to the reasons for the suspension.

¹ PERB Regulation 32320(d), provides in pertinent part: "Effective July 1, 2013, a majority of the Board members issuing a decision or order pursuant to an appeal filed under Section 32635 [Board Review of Dismissals] shall determine whether the decision or order, or any part thereof, shall be designated as precedential." Having met none of the criteria enumerated in the regulation, the decision herein has not been designated as precedential. (PERB Regs. are codified at Cal. Code Regs., tit. 8, § 31001 et seq.)

The Office of the General Counsel sent Quintanilla the warning letter (attached) on February 20, 2013, explaining the deficiencies of the initial charge and giving her until February 28, 2013, to file an amended charge. When no amended charge was filed, the Office of the General Counsel dismissed the case on March 7, 2013.

Quintanilla filed a timely appeal of the dismissal, asserting that she never received the warning letter because she was in the process of moving her residence. The UC did not file a response to this appeal.

The Board has reviewed the record in its entirety and given full consideration to the issues raised on appeal. Based on this review, the Board finds the warning and dismissal letters to be well-reasoned, adequately supported by the record and in accordance with the applicable law. Accordingly, the Board hereby adopts the warning and dismissal letters as the decision of the Board itself in accordance with the following discussion.

DISCUSSION

In her appeal, Quintanilla asserts that she did not receive the warning letter dated February 20, 2013, but did receive the dismissal letter sent approximately two weeks later. She explained that she was in the process of relocating her home from Richmond to Sacramento, but provided no information as to when she relocated. PERB's files contain no evidence that she notified this agency of a change of address.

Quintanilla asks in her appeal for an "opportunity to present [her] case," and then states that her employment with UC was terminated on April 9, 2012, for "allegedly violating the personal rights of a child." She claims this termination was unjust, retaliatory and "prejudiced because of my race." She also alleges that she suffered a three-day suspension on June 14, 2011, "because I had file [sic] a grievance of discrimination on or about March 15, 2011."

We dismiss this appeal because it fails to comply with PERB Regulation 32635 which governs appeals of dismissals. Subsection (a) of that regulation requires appeals to:

- (1) State the specific issues of procedure, fact, law or rationale to which the appeal is taken;
- (2) Identify the page or part of the dismissal to which each appeal is taken;
- (3) State the grounds for each issue stated.

Quintanilla has failed to comply with these requirements, but instead attempted to do what should have been done when she initially filed the charge--provide "a clear and concise statement of the facts and conduct alleged to constitute an unfair practice." (PERB Reg. 32615(a)(5).)² To satisfy the requirements of PERB Regulation 32635(a), the appeal must sufficiently place the Board and the respondent "on notice of the issues raised on appeal." (*State Employees Trades Council United (Ventura, et al.)* (2009) PERB Decision No. 2069-H; *City & County of San Francisco* (2009) PERB Decision No. 2075-M.)

PERB Regulation 32635(b) provides "unless good cause is shown, a charging party may not present on appeal new charge allegations or new supporting evidence." (See *Marin County Law Library* (2004) PERB Order No. Ad-338-M [amendment to unfair practice charge filed after dismissal is untimely; dismissal divests Office of the General Counsel of jurisdiction and charge may not be further amended]; see also, *CSU Employees Union, SEIU Local 2579 (Kyrias)* (2011) PERB Decision No. 2175-H.) The Board has found good cause when "the information provided could not have been obtained through reasonable diligence prior to the Board agent's dismissal of the charge." (*Sacramento City Teachers Association (Ferreira)* (2002) PERB Decision No. 1503.)

² We decline to treat this appeal as a late-filed amended charge. (*California School Employees Association & its Chapter 746 (Perez)* (2011) PERB Decision No. 2187; *Compton Unified School District* (2008) PERB Order No. Ad-374.)

We find no good cause to permit Quintanilla to present the new allegations contained in her appeal of the dismissal. It was Quintanilla's responsibility to notify PERB of her change of address, and she offers no explanation as to why this was not done. Although Quintanilla asserts that she moved, she does not indicate when this move occurred or, more importantly, why she failed to notify PERB of her change of address. Further, she presents no reason for why the allegations contained in her appeal could not have been presented in her initial unfair practice charge, or an amended charge to include her termination from employment, which occurred shortly after she filed the unfair practice charge. (*Palos Verdes Faculty Association (Stever)* (2012) PERB Decision No. 2289.)

For these reasons and for those described in the warning and dismissal letters, we hereby dismiss the appeal.

ORDER

The unfair practice charge in Case No. SF-CE-1005-H is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Chair Martinez and Member Banks joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD



San Francisco Regional Office
1330 Broadway, Suite 1532
Oakland, CA 94612-2514
Telephone: 510-622-1025
Fax: (510) 622-1027



March 7, 2013

Maritza I. Quintanilla

Re: *Maritza I. Quintanilla v. Regents of the University of California (Berkeley)*
Unfair Practice Charge No. SF-CE-1005-H
DISMISSAL LETTER

Dear Ms. Quintanilla:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on March 2, 2012. Maritza I. Quintanilla (Charging Party) alleges that the Regents of the University of California (Berkeley) (University or Respondent) violated the Higher Education Employer-Employee Relations Act (HEERA or Act).¹

Charging Party was informed in the attached Warning Letter, dated February 20, 2013, that the above-referenced charge did not state a prima facie case. You were advised that, if there were any factual inaccuracies or additional facts that would correct the deficiencies explained in that letter, you should amend the charge. You were further advised that, unless you amended the charge to state a prima facie case or withdrew it on or before February 28, 2013, the charge would be dismissed.

PERB has not received either an amended charge or a request for withdrawal. Therefore, the charge is hereby dismissed based on the facts and reasons set forth in the February 20, 2013 Warning Letter.

Right to Appeal

Pursuant to PERB Regulations,² Charging Party may obtain a review of this dismissal of the charge by filing an appeal to the Board itself within twenty (20) calendar days after service of this dismissal. (Cal. Code Regs., tit. 8, § 32635, subd. (a).) Any document filed with the Board must contain the case name and number, and the original and five (5) copies of all documents must be provided to the Board.

¹ HEERA is codified at Government Code section 3560 et seq. The text of the HEERA and PERB Regulations may be found at www.perb.ca.gov.

² PERB Regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

A document is considered "filed" when actually received during a regular PERB business day. (Cal. Code Regs., tit. 8, §§ 32135, subd. (a) and 32130; see also Gov. Code, § 11020, subd. (a).) A document is also considered "filed" when received by facsimile transmission before the close of business together with a Facsimile Transmission Cover Sheet which meets the requirements of PERB Regulation 32135(d), provided the filing party also places the original, together with the required number of copies and proof of service, in the U.S. mail. (Cal. Code Regs., tit. 8, § 32135, subds. (b), (c) and (d); see also Cal. Code Regs., tit. 8, §§ 32090 and 32130.)

The Board's address is:

Public Employment Relations Board
Attention: Appeals Assistant
1031 18th Street
Sacramento, CA 95811-4124
(916) 322-8231
FAX: (916) 327-7960

If you file a timely appeal of the refusal to issue a complaint, any other party may file with the Board an original and five copies of a statement in opposition within twenty (20) calendar days following the date of service of the appeal. (Cal. Code Regs., tit. 8, § 32635, subd. (b).)

Service

All documents authorized to be filed herein must also be "served" upon all parties to the proceeding, and a "proof of service" must accompany each copy of a document served upon a party or filed with the Board itself. (See Cal. Code Regs., tit. 8, § 32140 for the required contents.) The document will be considered properly "served" when personally delivered or deposited in the mail or deposited with a delivery service and properly addressed. A document may also be concurrently served via facsimile transmission on all parties to the proceeding. (Cal. Code Regs., tit. 8, § 32135, subd. (c).)

Extension of Time

A request for an extension of time, in which to file a document with the Board itself, must be in writing and filed with the Board at the previously noted address. A request for an extension must be filed at least three (3) calendar days before the expiration of the time required for filing the document. The request must indicate good cause for and, if known, the position of each other party regarding the extension, and shall be accompanied by proof of service of the request upon each party. (Cal. Code Regs., tit. 8, § 32132.)

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Final Date

If no appeal is filed within the specified time limits, the dismissal will become final when the time limits have expired.

Sincerely,

M. SUZANNE MURPHY
General Counsel

By

Daniel Trump
Regional Attorney

Attachment

cc: Shondella M. Reed, Counsel
Joyce Harlan, Labor Relations Specialist

PUBLIC EMPLOYMENT RELATIONS BOARD



San Francisco Regional Office
1330 Broadway, Suite 1532
Oakland, CA 94612-2514
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February 20, 2013

Maritza I. Quintanilla

Re: *Maritza I. Quintanilla v. Regents of the University of California (Berkeley)*
Unfair Practice Charge No. SF-CE-1005-H
WARNING LETTER

Dear Ms. Quintanilla:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on March 2, 2012. Maritza I. Quintanilla (Charging Party) alleges that the Regents of the University of California (Berkeley) (University or Respondent) violated the Higher Education Employer-Employee Relations Act (HEERA or Act).¹

The charge does not contain a "clear and concise statement of the facts and conduct alleged to constitute an unfair practice" as required by PERB Regulation 32615. In lieu of a statement of the charge, Charging Party has attached numerous documents related to her employment with the University, and a document stating that she was suspended for five days dated November 28, 2011.

Charing Party's Burden

PERB Regulation 32615(a)(5) requires, inter alia, that an unfair practice charge include a "clear and concise statement of the facts and conduct alleged to constitute an unfair practice." Charging Party should allege the "who, what, when, where and how" of an unfair practice. (*State of California (Department of Food and Agriculture)* (1994) PERB Decision No. 1071-S, citing *United Teachers-Los Angeles (Ragsdale)* (1992) PERB Decision No. 944.) Mere legal conclusions are not sufficient to state a prima facie case. (*Ibid.*; *Charter Oak Unified School District* (1991) PERB Decision No. 873.)

PERB has previously held that unorganized notes and exhibits attached to a charge do not satisfy a charging party's burden under PERB Regulation 32615(a)(5). (*Lindsay Unified School District* (1992) PERB Decision No. 936.)

¹ HEERA is codified at Government Code section 3560 et seq. The text of the HEERA and PERB Regulations may be found at www.perb.ca.gov.

The materials attached to this charge, none of which were prepared by Charging Party, include a notice of a five day suspension dated November 28, 2011 and numerous attachments to that notice. Among these is an investigation report related to a five day suspension prepared by an analyst from the University's Employee Relations department. Although a review of these materials has been conducted, the undersigned is unable to determine what conduct by the University Charging Party alleges is in violation of the Act. For this reason, Charging Party has not meet her burden under PERB Regulation 32615(a)(5).

For these reasons the charge, as presently written, does not state a prima facie case.² If there are any factual inaccuracies in this letter or additional facts that would correct the deficiencies explained above, Charging Party may amend the charge. The amended charge should be prepared on a standard PERB unfair practice charge form, clearly labeled First Amended Charge, contain all the facts and allegations you wish to make, and be signed under penalty of perjury by an authorized agent of Charging Party. The amended charge must have the case number written on the top right hand corner of the charge form. The amended charge must be served on the Respondent's representative and the original proof of service must be filed with PERB. If an amended charge or withdrawal is not filed on or before February 28, 2013,³ PERB will dismiss your charge. If you have any questions, please call me at the above telephone number.

Sincerely,

Daniel Trump
Regional Attorney

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² In *Eastside Union School District* (1984) PERB Decision No. 466, the Board explained that a prima facie case is established where the Board agent is able to make "a determination that the facts as alleged in the charge state a legal cause of action and that the charging party is capable of providing admissible evidence in support of the allegations. Consequently, where the investigation results in receipt of conflicting allegations of fact or contrary theories of law, fair proceedings, if not due process, demand that a complaint be issued and the matter be sent to formal hearing." (*Ibid.*)

³ A document is "filed" on the date the document is **actually received** by PERB, including if transmitted via facsimile. (PERB Regulation 32135.)